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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,075	07/24/2003	Takao Yamaguchi	MDA-2880US3	9771

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RATNERPRESTIA  
P.O. BOX 980  
VALLEY FORGE, PA 19482

EXAMINER
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KOSTAK, VICTOR R

ART UNIT	PAPER NUMBER
2622	

MAIL DATE	DELIVERY MODE
10/19/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/626,075

Applicant(s)

YAMAGUCHI ET AL.

Examiner

Victor R. Kostak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 September 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 23, 59-62 and 95-99 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23, 59-62 and 95-99 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. Applicant's arguments filed on 09/10/07, in light of the amendment, have been fully considered but they are not persuasive. The Klemets reference is still applicable, and the following rejection has been repeated from the last Office action, modified to address the amended claim language. (New claim 99 is addressed as well, on its own).

Applicant's arguments are addressed in **bold** to assist in distinguishing that language from the rejection.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 23, 59-62 and 95-98 are again rejected under 35 U.S.C. 102(e) as being anticipated by Klemets et al. (5,918,002, of record).

New claim 99 is also rejected under 35 U.S.C. 102(e) as being anticipated by Klemets et al. (5,918,002, of record).

Reviewing Klemets (Fig. 1), he communicates digital compressed audio/video/text data streams (e.g. col. 2 lines 44-48) wherein he includes priority data added to the encoded data stream (e.g. col. 12 lines 8-20) to thin the data (i.e. to lower the bandwidth by dropping bits) when the actual transfer rate exceeds the expected (target) rate (e.g. col. 8 line 35+), the buffering timing and readout being delayed upon the comparison of timing (Figs. 5C, 5D 7A). A priority threshold is determined (Figs. 5A, 5B, 6B) to achieve a desired transmission rate,

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wherein the data stream is transmitted at the desired rate when the data quality and bandwidth satisfy the threshold; and when the bandwidth and/or loss rate exceeds the threshold, the threshold is adjusted (e.g. Figs. 8-11; col. 6 lines 3-18; col. 7 line 8+).

**It is first noted that the claim language is more so rearranged than amended, with an added description of the priority threshold determination and the application to data portions related thereto.**

**Continuing, applicant acknowledges that the description of the thresholding of Klemets is used to adjust the transmission rate, but argues that it is not used to determine whether particular portions of data should be transmitted or not.**

**The examiner counters by pointing out that as Klemets expressly equates his transmission rate to bandwidth (col. 6 lines 38-41), that bandwidth (which characteristically contains actual encoded data) is adjusted to either include more data bits or less data bits (col. 6 line 45+). Those data bits correspond to portions of the encoded data stream. Those bits are indeed data portions. Some of the portions are transmitted and some are not. The bits dropped correspond to the data portions that are not transmitted.**

**Furthermore, Klemets goes on to explain that his prioritization can be based on a *scalable layered* protocol based on parameters including resolution and frame rate (col. 12 lines 15-16). This is additional compensation or data content compromise that is dictated by the threshold-determined adequacy or inadequacy of the data, and one of ordinary skill in the art can very reasonably consider or designate his transmission rate/bandwidth amount as a priority threshold since the decision on data quantity directly involves giving**

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priority to data to be transmitted and other data to not be transmitted (thereby lowering the bit rate).

Moreover, Klemets does not rely on a selection between two transmission rates (or bandwidth amounts) so dictated by the target rate but continuously adjusts the determined thresholds associated with the desired rates/bandwidths as he dynamically makes the selections of plural bit rates. He expressly gives two examples but points out that they are selected from a continuous range (col. 6 lines 49-54). The *continuous* range is adjusted on a *dynamic* basis, meaning that the transmission rate/bandwidth is determined according to an *adjustable* thresholding technique to continuously modify the degree of thinning (when necessary), ultimately to assure a realistic quality in reception/playback.

Claims 23 and 95 therefore accordingly remain rejected.

As for claims 59 and 60, the data packet stream (claimed time-series data) includes priority information (parent/child frame designations: col. 12 lines 8-14) and other priority assignments (col. 12 lines 15-20), including threshold data priority. The threshold priority is determined (discussed above) and the data content and priority data are transmitted and received in the communication operation. If there is a data loss, retransmission is requested (Fig. 12; col. 11 line 26+), and if data loss rate exceeds the threshold, the threshold can be adjusted (also discussed above). The data is accordingly retransmitted when the threshold priority is satisfied (or another retransmission would be required).

The examiner's explanation given above regarding claims 23 and 95 is also applied to these two claims.

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As for claims 61 and 62, when the digital serial data stream suffers a loss at a particular rate of occurrence, the threshold priority is accordingly adjusted (also discussed previously).

**The examiner's explanation given above regarding claims 23, 95, 59 and 60 is also applied to these two claims.**

Regarding identical claims 96-98, priority is increased to the more relevant data content for both transmission and retransmission when data loss is a factor (noting again col. 12 lines 8-30).

As for new claim 99, the encoded information is for MPEG data comprising I, B and P frames (e.g. col. 12 lines 42-47), and the priority threshold is raised or lowered according to the priority information added to the encoded information.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor R. Kostak whose telephone number is (571) 272-7348. The examiner can normally be reached on Monday - Friday from 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David W. Ometz can be reached on (571) 272-7593. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

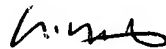
**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**Or faxed to:**

**(571) 273-8300**

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Customer Service Office whose telephone number is (703) 308-HELP.



Victor R. Kostak  
Primary Examiner  
Art Unit 2622

VRK